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QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

Letter dated 24 September 1996 from the Minister for Foreign Affairs of the Republic of Poland addressed to the Secretary-General

I have the honour to transmit to you a draft United Nations framework convention against organized crime (see annex), which was attached to the statement delivered by His Excellency Mr. Aleksander Kwasniewski, President of the Republic of Poland, in the General Assembly on 24 September 1996.

I should be grateful if you would have this draft circulated as an official document of the General Assembly under agenda item 158 entitled "Question of the elaboration of an international convention against organized transnational crime".

(Signed) Dariusz ROSATI
Minister for Foreign Affairs of
the Republic of Poland
Head of the Polish delegation
to the fifty-first session
of the General Assembly

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ANNEX

Draft United Nations framework convention against organized crime

The State Parties to the present Convention,

Concerned with the growing threat of organized crime, including the illicit traffic in narcotic drugs and psychotropic substances, money laundering, illicit traffic in arms, nuclear material and explosive devices, motor vehicles, objects of arts,

Concerned also with the increasing threat of organized crime to global security and criminal justice,

Aware that organized crime, in its national and transnational dimensions, destabilizes international relations, including interregional, regional, subregional and bilateral cooperation, by exerting influence on politics, the media, public administration, judicial authorities and the economy by establishing commercial or business-like structures,

Convinced that a flexible and efficient framework for multilateral and bilateral cooperation is required to intensify law enforcement, criminal justice and crime prevention activities of Member States,

Recalling General Assembly resolution 49/159, in which it approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,

Recalling further recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,

Bearing in mind the United Nations model legal arrangements, such as the Model Treaty on Mutual Assistance in Criminal Matters, the Model Treaty on the Transfer of Proceedings in Criminal Matters, the Model Treaty on Extradition, the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released and the Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the Form of Movable Property,

Mindful of other existing criminal justice and human rights instruments which provide legal protection to offenders and victims of crime,

Affirming that the matters regulated by the present Convention continue to be governed by the rules and principles of general international law,

Have agreed on the following:

Article 1

1. For the purpose of this Convention "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and to infiltrate the legitimate economy, in particular by:

(a) Illicit traffic in narcotic drugs or psychotropic substances, and money laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988;

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949;

(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929;

(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995;

(e) Stealing of nuclear material, its misuse or threats to misuse to harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 3 March 1980;

(f) Terrorist acts;

(g) Illicit traffic in or stealing of arms and explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles;

(i) Corruption of public officials.

2. For the purpose of the present Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such organization.

Article 2

1. Each Contracting State shall make the offences, enumerated in article 1 of the present Convention punishable by appropriate penalties which take into account their grave nature.

2. Each Contracting State shall make punishable acts consisting of participation in or association with an organized crime group whose purpose it is to commit offences.

3. Each Contracting State shall take necessary measures to create the possibility of the confiscation of the profits deriving from organized crime.

Article 3

Each Contracting State shall consider establishing in its domestic penal legislation the possibility of criminal liability of corporate persons who derive profits from organized crime or function as a cover for the criminal organization.

Article 4

Each Contracting State shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for offences referred to in article 1 of the present Convention for the purpose of establishing the criminal history of the alleged offender.

Article 5

1. Each Contracting State shall take legislative measures to establish its jurisdiction over the crimes mentioned in article 1 of the present Convention in the following cases:

(a) When the crime is committed in the territory of that State or on board a vessel or aircraft registered in that State;

(b) When the alleged offender is a national of that State. Such jurisdiction shall be independent of the punishability of the act in the place of its commission;

(c) When the alleged offender is present in its territory and it does not extradite him. Such jurisdiction shall be independent of the punishability of the act in the place of its commission.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with the domestic law.

Article 6

1. The offences mentioned in article 1 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty between the Contracting States. The Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it shall consider the present Convention as the legal basis for extradition in respect of the offences mentioned in article 1 of this Convention. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. The Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences mentioned in article 1 of the present Convention as extraditable offences between them, subject to the conditions provided by the law of the requested State.

4. The Contracting States, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries, and extraditing persons based only on warrants of arrests or judgements.

Article 7

1. Each Contracting State shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence defined in article 1 of the present Convention.

2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the requesting State.

Article 8

1. The offences mentioned in article 1 of the present Convention shall not be considered political offences for the purpose of extradition.

2. Extradition shall not be granted if the present Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that a person's position may be prejudiced for any of these reasons.

Article 9

Upon being satisfied that the circumstances so warrant, the Contracting State in whose territory the alleged offender is present, shall take a person whose extradition is sought into custody or take other appropriate measures under its domestic law, so as to ensure his presence for the purpose of extradition.

Article 10

1. The Contracting States shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences mentioned in article 1 of the present Convention and exercise flexibility in the execution of request for such mutual assistance.

2. Subject to domestic legislation, legal assistance shall include also the delivery of information constituting bank secrecy.

Article 11

1. The Contracting States shall consider entering into bilateral and multilateral agreements including the direct cooperation between their police agencies and common operations in the territory of each Contracting State.

2. The Contracting States shall strengthen cooperation in law enforcement training and crime prevention to facilitate mutual assistance and extradition, such as language training, secondments and exchanges.

3. In the case of existing bilateral and multilateral agreements, the Contracting States shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (INTERPOL) and within other relevant bilateral and multilateral agreements or arrangements.

Article 12

1. The Contracting States shall consider entering into bilateral and multilateral agreements on the cooperation between or among criminal justice authorities on the exchange of information concerning all aspects of the criminal activity of persons involved in organized crimes, defined in article 1 of the present Convention, including information from their registers of convicted persons.

2. The Contracting States shall facilitate such exchange of information on the basis of their domestic legislation.

3. The Contracting States shall consider the establishment of a common data bank on organized criminality, including information on the activities of criminal groups and their members, and information on convicted persons.

4. The collection of information mentioned above shall be carried out with due regard for the need for legal protection of personnel files, as provided for in the domestic and international provisions.

Article 13

The Contracting Parties shall cooperate in the establishment and implementation of their respective witness protection programmes, including the protection of witness families, in particular by creating the possibility of the settlement of a foreign protected witness in their territories.

Article 14

A Contracting State may adopt more strict or severe measures than those provided by this Convention, if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime.

Article 15

1. For the purpose of examining the progress made by the Contracting States in achieving the realization of the obligations undertaken in the present Convention, these States will provide periodical reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

2. The Contracting States undertake to provide such reports within two years of the entry into force of the Convention for the Contracting State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A Contracting State which has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the Contracting States further information relevant to the implementation of the Convention.

6. The Commission shall make its recommendations, and submit to the Economic and Social Council reports on its activities, in accordance with existing provisions.

7. The Contracting States shall make their reports widely available to the public in their own countries.

Article 16

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations, in consultative status with the Economic and Social Council, and other invited multilateral organizations, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental, non-governmental organizations, other multilateral organizations and the specialized agencies, any reports from the Contracting States that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on these requests or indications;

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article 14 of the present Convention. Such suggestions and general recommendations shall be transmitted to any Contracting Party concerned and reported to the Economic and Social Council, together with comments, if any, from the Contracting States.

Article 17

This Convention shall be open by all States for signature from _____ to _____, and thereafter at the Headquarters of the United Nations in New York until _____.

Article 18

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 19

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations after the twentieth instrument of ratification, acceptance, approval or accession.

2. For each Contracting State ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 20

1. The Contracting State may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Contracting States, with a request that they indicate whether they favour a conference of Contracting States for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such conference, the Secretary-General shall convene under the conference auspices of the United Nations. Any amendment adopted by a majority of Contracting States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of Contracting States.

3. When an amendment enters into force, it shall be binding on those State Parties which have accepted it, other Contracting States still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 21

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by Contracting States at the time of ratification, acceptance, approval or acceding.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 22

A Contracting Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 23

The Secretary-General of the United Nations is designated as the depository of the present Convention.

Article 24

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.